CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 229

DISTRICT OF COLUMBIA, PETITIONER,

vs.

CHARLES H. FRED, ALIAS HAMILTON C. FRED

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 10, 1929

CERTIORARI GRANTED OCTOBER 21, 1929

(34,360)

(34,360)

SUPREME COURT OF THE UNITED STATES

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[fols. a & 1]

IN POLICE COURT OF THE DISTRICT OF COLUMBIA

SEPTEMBER TERM, 1928

McMahon, Judge

No. 128,933

DISTRICT OF COLUMBIA

vs.

CHARLES H. FRED, alias HAMILTON C. FRED

Information for Revoked Permit

DOCKET ENTRIES

Be it remembered, That in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Sept. 4, 1928.—Information filed. Plea Not Guilty. Jury Trial Demanded. Committed to Washington Asylum & Jail to await further hearing.

Sept. 5, 1928.—Released on $1,000 real estate bond for appearance at Police Court.

Nov. 23, 1928.—Verdict Guilty.

Nov. 27, 1928.—Motion for New Trial Filed.

[fol. 2] Dec. 1, 1928.—Motion for New Trial Overruled. Sentenced to be committed to the Washington Asylum & Jail for a term of 30 Days. Exceptions noted. Notice given of applying to the Court of Appeals for Writ of Error. Released on $500 Appeal Bond, Saml. H. Rogers, Surety.

Dec. 5, 1928—Bill of Exceptions Submitted.

Jan. 14, 1929.—Assignment of errors filed.

Jan. 28, 1929—Bill of Exceptions settled, signed, sealed and filed.

Febr. 1, 1929.—Writ of Error received from Court of Appeals.

Feby. 5, 1929.—Copy of record and proceedings in this case, together with Writ of Error transmitted to Court of Appeals in obedience to said Writ.

In Police Court of the District of Columbia

Information

The District of Columbia, ss:

William W. Bride, Esq., Corporation Counsel, by Stanley De Neale, Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that Charles H. Fred, (alias) Hamilton C. Fred, late of the District of Columbia aforesaid, on the 3rd day of September, in the year A. D. nineteen hundred and twenty-eight, in the District of Columbia aforesaid, and on K Street, Northwest, did then and there operate a certain motor vehicle and during the period for which his operator's permit to drive a motor vehicle in the District of Columbia had been revoked and suspended by the Director of Traffic, said operator's permit having been revoked and suspended on the 16th day of December, nineteen hundred and twenty-six, said permit not having been restored, contrary to and in violation of an Act of Congress in such case made and provided, and constituting a law of the District of Columbia.

William W. Bride, Corporation Counsel, by S. De Neale, Assistant Corporation Counsel.

[fol. 3] Personally appeared H. H. Britton this 4th day of September, A. D. 1928, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

I, Robertson, Deputy Clerk, Police Court of the District of Columbia. (Seal Police Court of District of Columbia.

[Endorsed:] McMahon, Judge. Col. —. No. 128, 933. Information. Traffic. District of Columbia vs. Charles H. Fred, alias Hamilton C. Fred. Notified to appear in Court at——. Revoked permit. Witnesses: H. H. Britton, Officer. H. H. Hoke. Sep. 4th, 1928, P. N. G. Sep. 4th, 1928, J. T. D. Sep. 4th, 1928, 1,000 Bond. Filed Sep. 4th, 1928. F. A. Sebring, Clerk of Police Court. 5/5/28, on bond, Saml. L. Rogers. 9/4/28, 9/5/28. /¢ Sep. 20, 1928, cont. 10/4/28, request asst. corp. counsel, C. H. Gray. Oct. 11, 1928, cont. 10/19/28, cont. for reassignment. 10/19/28, cont. for reassignment. 11/16/28, cont. to 11/23/28. 11/23/28, Verdict Guilty. 11/27/28, Motion for new Trial filed. 11/30/28, cont. to 12/1/28. 12/1/28 motion for new trial overruled. 12/1/28, 30 days, Committed. Ex. noted. Notice given of applying to Court of Appeals for writ of Error. Appeal Bond, $500. December 1, 1928. Recognizance in the sum of $500 entered into on writ of error to Court of Appeals D. C. upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days appear in Police Court and abide by and perform its judgment and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Samuel H. Rogers, Surety. 12/5/28, Bill of Exceptions submitted. Dec. 17, 1928, time for signing bill of exceptions extended to Dec. 29, 1928. Dec. 29, 1928, time for signing bill of exceptions extended to Jan. 17, 1929. Jan. 17, 1929, time for signing bill of exceptions extended to Jan. 29, 1929. Jan. 14, 1929, assignment for error filed. Jan. 28th 1929, Bill of exceptions settled, signed, sealed and files. February 1, 1929, Writ of Error [fol. 4] received from Court of Appeals. Feby. 5, 1929, Copy of record and proceedings in this case, together with Writ of Error, transmitted to Court of Appeals in obedience to said Writ.

In Police Court of the District of Columbia

[Title omitted]

Motion for a New Trial—Filed Nov. 27, 1928

Comes now here the defendant, by his attorneys, Hawken & Havell and Harold F. Hawken, and moves the Court to grant him a new trial in the above entitled cause on the following grounds:

1. Because the Court committed error in the admission and exclusion of evidence during the trial.

2. Because of errors of law committed by the Court in its charge to the jury.

3. Because the jury rendered a verdict of guilty on the second charge of operating a- automobile after revocation of permit; that after the rendition of the said verdict the jury was discharged and ordered to return the following Monday, at which time it was disbanded and later reassembled by the Court and the present verdict rendered.

(Signed) Hawken & Havell, by Harold F. Hawken,
Attorneys for Defendant.

[File endorsement omitted.]

[fols. 5 & 6] Recognizance on writ of error for $500.00, approved December 1, 1928, omitted in printing.

[fol. 7] In Police Court of the District of Columbia

[Title omitted]

Bill of Exceptions and Order Settling Same

Be it remembered that this cause came on for hearing before the Honorable John P. McMahon, one of the judges of the Police Court of the District of Columbia, on the 23rd day of November, 1928, on a plea of not guilty hereto-

fore entered by defendant, Charles H. Fred, and a demand for a jury trial made by him, on a charge of operating a certain motor vehicle in the District of Columbia during the period for which his operator's permit to drive a motor vehicle in the District of Columbia had been revoked and suspended by the Director of Traffic, in violation of Section 13 (d) of the Traffic Act for the District of Columbia, approved March 3, 1925, as amended by Act of Congress approved July 3, 1926, which provides as follows:

"Sec. 13 (d). Any individual found guilty of operating a motor vehicle in the District of Columbia during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this Act shall for each such offense, be fined not less than $100 nor more than $500, or imprisoned not less than 30 days nor more than one year, or both."

The District of Columbia to prove the issue on its part joined produced testimony to the effect that the defendant, a resident of the District of Columbia had been properly issued a permit to operate a motor vehicle in the District of Columbia by the Director of Traffic on November 8, 1926; that under the authority of the Traffic Acts, Sec. 13 [fol. 8] (a), said permit and right to operate a motor vehicle in the District of Columbia had been revoked on the 15th day of December, 1926, and that on the 26th day of December, 1926, said defendant had been personally served with a copy of said order of revocation, and that on the 3rd day of September, 1928, defendant was arrested while operating a motor vehicle in the District of Columbia after having been in a collision with another vehicle previous thereto.

The testimony further showed, on behalf of the District, that said permit and right to operate a motor *b*ehicle in the District had not been restored to defendant; that no application for a review of the order of revocation had been made to the Commissioners of the District of Columbia; that no application for a writ of error had been applied for, to the Court of Appeals and that the defendant had been, prior to the filing of the instant charge, and prior to and after the passage of the Traffic Acts of Congress, convicted of violations of the laws of the District of Columbia while operating motor vehicles as follows:

Twice in 1922, for driving an automobile while intoxicated.
Once in 1923, for driving an automobile while intoxicated.
for speeding.
for driving on wrong side of street.
for driving with illegal brakes.
for making illegal turn in street.
Once in 1925, for speeding.
for reckless driving.
Once in 1927, for reckless driving.
Once in 1928, for operating a motor vehicle during the period for which his operator's permit to drive a motor vehicle in the District had been revoked and suspended by the Director of Traffic, said permit not having been restored, and for operating an automobile while under the influence of intoxicating liquor.

The District further showed that as late as April, 1928, defendant had been issued by the District of Columbia License Office automobile license tags and registration card for the year 1928.

[fol. 9] Thereupon the District of Columbia rested and defendant offered testimony to the effect that he had been a resident of the State of Virginia since April, 1928; that on August 6, 1928, there was issued to him by the proper authorities of the State of Virginia, a motor vehicle registration card number 540,221; that he had complied with the laws of the State of Virginia in securing said card authorizing him to operate a motor vehicle in the State of Virginia; that on the 3rd day of September, 1928, the date of his arrest in the District of Columbia, he had with him the said registration card and had on his motor vehicle, Virginia tags. The defendant further showed that he had been operating said motor vehicle in the District of Columbia for about four hours previous to the time thereto.

Thereupon the defendant, by his counsel, S. McComas Hawken, moved the Court, Honorable John P. McMahon presiding, that upon all the testimony, as a matter of law, the jury should be instructed to return a verdict of not guilty, on the ground that the defendant, Charles H. Fred, was the operator of a Virginia owned motor vehicle, who had complied with the laws of the State of Virginia in re-

spect to the registration of motor vehicles and the licensing of operators and was exempt from compliance with the District of Columbia law relating to the issuance of operator's permits as set forth in Section 7 and Section 13 (d) of the Traffic Act of said District, by reason of the provisions of Section 8, paragraphs (a) and (b), relating to non-residents, and that in view of the prior decision by the Court of Appeals in the case of King vs. The District of Columbia, 51 Appeals D. C., 160, rendered January 22, 1922, defendant was within his rights in operating a motor vehicle in the District of Columbia with Virginia tags and registration card.

Thereupon the Court, Honorable John P. McMahon presiding, overruled said motion, stating that no agreement had been shown to exist between the State of Virginia and the District of Columbia, whereby residents of that State and the District are permitted and entitled to operate motor vehicles after revocation of permits, nor did such right exist as a matter of reciprocity, and that Section 8 of the District Traffic Act could not and did not apply because Section 13 (a) specifically prohibits any individual from [fol. 10] operating a motor vehicle in the District during the period for which his operator's permit had been revoked or suspended, thus differentiating the King case, supra, from the instant one because in the former, such an agreement was shown to exist and was the basis for that decision, and further because of the fact that King was charged with operating an automobile without a District permit under a Commissinoners' regulation, and not during the time such permit had been revoked, no such violation being known to law at that time in the District.

Whereupon defendant, through his attorney, S. McComas Hawken, noted an exception to the said ruling of the Court and gave notice of his intention to apply to the Court of Appeals for a writ of error.

Thereupon the jury were instructed that if they believed under the evidence that the defendant did at one time have a District of Columbia operator's permit and that permit was revoked and had not been restored to him on the 3rd day of September, 1928, and he was operating a motor vehicle in the District of Columbia on that date, it would be their duty to bring in a verdict of guilty.

Whereupon the jury, after retiring to consider the case, returned with a verdict of guilty as charged, on the same day, and the Court, Honorable John P. McMahon presiding, then and there sentenced defendant to serve 30 days in the Washington Asylum and Jail, and counsel for defendant thereupon noted an exception in open court to the judgment of the Court and gave notice of defendant's intention of applying to the Court of Appeals of the District of Columbia for a writ of error.

Comes now the defendant, by his counsel, S. McComas Hawken, and prays the Court to sign this bill of exceptions and the same is signed and settled, now for then, and made a part of the record in this cause this 28th day of January, 1929.

John P. McMahon, Judge.

[fol. 11] In Police Court of the District of Columbia

[Title omitted]

Assignment of Error—Filed Jan. 14, 1929

The assignment of error relied upon in this appeal is as follows:

That the Court erred in instructing the jury that no reciprocity under the Traffic Laws of the District of Columbia existed between the District of Columbia and the State of Virginia.

(Signed) Hawken & Havell, Attorneys for Defendant, by H. F. Hawken.

[File endorsement omitted.]

In Police Court of the District of Columbia

Writ of Error

United States of America, ss:

The President of the United States to the Honorable John P. McMahon, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police

Court, before you, between District of Columbia, plaintiff, and Charles H. Fred, defendant, Information No. 128,933, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you [fols. 12 & 13] send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the First day of February, in the year of our Lord one thousand nine hundred and twenty-nine.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

Allowed by Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 14] Minute entry of argument and submission May 8, 1929, omitted in printing.

[fol. 15] In Court of Appeals of the District of Columbia

No. 4916

Charles H. Fred, alias Harry C. Fred, Plaintiff in Error,

vs.

District of Columbia, Defendant in Error

Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices

Writ of Error to the Police Court of the District of Columbia

Opinion—Filed June 3, 1929

Mr. Justice Robb delivered the opinion of the Court:

In 1926 plaintiff in error was a resident of the District and the holder of a District permit to operate a motor vehicle. On December 15th of that year the permit was revoked.

In April of 1928 he became a bona fide resident of the State of Virginia. In August of that year there was regularly issued to him in that State a motor vehicle registration card entitling him to operate a motor vehicle in the State of Virginia. In addition to this registration card, the Virginia authorities also issued to him automobile license tags for his machine. In September, following, and while the Virginia operator's permit was in force, and while he was temporarily in the District of Columbia and driving the automobile equipped with Virginia tags, he was arrested and charged with driving a motor vehicle in the District "during the period for which his operator's permit to drive a motor vehicle in the District of Columbia had [fol. 16] been revoked and suspended by the Director of Traffic." He was subsequently tried and convicted.

In King v. District of Columbia, 51 App. D. C. 160, 277 F. 562, King, after his District permit to operate an automobile had been revoked, became a resident of the State of Virginia and there obtained a driver's permit and registration tags. He was subsequently arrested in the District

and charged with driving an automobile without a permit. The Act of March 3, 1917 (39 Stat. 1004, 1012), provided "that motor vehicles, owned or operated by persons not legal residents of the District of Columbia but who shall have complied with the laws of the State of their legal residence requiring the registration of motor vehicles or licensing of operators thereof * * * shall not be required to be licensed or registered * * * under the laws and regulations of the District if the State in which the owner or operator of such motor vehicle has his legal residence extends the same privilege to the motor vehicle owned or operated by legal residents of the District of Columbia." It appeared that the State of Virginia extended the same privilege to motor vehicles owned or operated by legal residents of the District.

The Court said:

"It appears, then, that at the time of defendant's arrest there was an agreement between the District and Virginia providing that a person entitled to operate a motor vehicle in Virginia was entitled to operate one in the District without having a District driver's permit. The argument of [fol. 17] counsel for the District seems to be that this agreement was not authorized by the act of Congress, for they say that *the only question involved is whether or not the act authorized the operation of a motor vehicle in the District by a nonresident whose District operator's permit had been revoked.* The agreement does not exclude such a person from its protection. Nothing is said therein about a nonresident whose permit had been revoked. It provides broadly that any one legally entitled to operate a motor vehicle in Virginia is entitled to do so in the District without a District driver's permit, so long as that State extends the same privilege to residents of the District. King came squarely within the agreement, and if it is valid he was wrongfully convicted." (Italics ours.)

The Court found that, although the statute was inartificially drawn, the agreement between the District and the State expressed correctly its meaning, and that it was not necessary to "license the orepator" or "register the vehicle." The judgment of conviction was therefore reversed.

The opinion in the King case was rendered in 1921. Subsequently there was enacted the Traffic Act of March 3, 1925 (43 Stat. 1119), which was amended by the Act of July 3, 1926 (44 Stat. Pt. 2, 812). Sec. 8 of the Act of 1925 provides that "the owner or operator of any motor vehicle who is not a legal resident of the District, and who has com-
[fol. 18] plied with the laws of any State, * * * in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 7 (requiring District operators' permits) and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District." The section charges the Director of Traffic with the duty of ascertaining whether a similar privilege is extended to legal residents of the District in such States, and to cause his findings to be promulgated. This he has done.

It thus appears that the Act of 1925 removed the ambiguity which the Court in the King case found to exist in the Act of 1917, and expressly relieved the non-resident owner or operator of a motor vehicle, who has complied with the laws of his State respecting registration and operators' licenses, from either registering his vehicle here or obtaining a local operator's permit, provided only that similar privileges are extended to residents of the District in that State.

As observed in the King case, "we may say that our holding does not relieve a nonresident operator of amenability to valid traffic regulations. If guilty of negligence or other infraction of the law, he may be punished." See Sec. 13 (c), Act of 1925.

[fol. 19] The decision in the King case is squarely in point and decisive of the issue here.

The judgment is reversed, with costs, and the cause remanded.

Reversed.

[File endorsement omitted.]

[fol. 20] In Court of Appeals of District of Columbia, April Term, 1929

No. 4916

Charles H. Fred, alias Hamilton C. Fred, Plaintiff in Error,

vs.

District of Columbia

In Error to the Police Court of the District of Columbia

Judgment—June 3, 1929

This cause came on to be heard on the transcript of the record from the Police Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Police Court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby remanded to the said Police Court.

Per Mr. Justice Robb, June 3, 1929.

[fol. 21] In Court of Appeals of the District of Columbia

[Title omitted]

Designation of Record—Filed July 2, 1929

The Clerk of the Court of Appeals will include the following on petition for Certiorari to the Supreme Court of the United States in its designation of the record in this case, to wit:

1. The printed record in the Court of Appeals.
2. Argument of cause.
3. Opinion of the Court.
4. Judgment.
5. This designation.

William Bride, Edward W. Thomas, Attorneys for District of Columbia.

Service of copy of the aforegoing acknowledged this 2nd day of July, 1929.

Hawkin & Harell, Attorney- for Plaintiff in Error,
per A. L. H.

[fol. 22] [File endorsement omitted.]

[fol. 23] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 24] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 21, 1929

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,360. Court of Appeals, District of Columbia. Term No. 229. District of Columbia, petitioner, vs. Charles H, Fred, alias Hamilton C. Fred. Petition for writ of certiorari and exhibit thereto. Filed July 10, 1929. File No. 34,360.